

TENANT BANKRUPTCY: FREQUENTLY ASKED QUESTIONS FOR LANDLORDS

When a tenant files for bankruptcy, landlords often have urgent questions about their rights, rent collection, eviction, and lease enforcement. The legal complexities of bankruptcy law—particularly the automatic stay—can make it challenging for landlords to determine their next steps.

To help landlords navigate this situation, we've compiled answers to some of the most frequently asked questions we receive when a tenant files for bankruptcy. Dealing with your tenant's bankruptcy requires legal expertise and careful strategy. If you need guidance, Anderson & Associates is here to help. For additional questions or to set up a consultation, please contact Julie A. Anderson at: julie@mokslaw.com or Michael J. Wambolt at michael@mokslaw.com.

Q: What is bankruptcy?

A. Bankruptcy is a federal court process that allows individuals to eliminate their debts or, in certain cases, repay their creditors under a structured plan. There are three main types of bankruptcy: Chapter 7, known as "liquidation," Chapter 13, known as "reorganization," and Chapter 11 which can be either a "reorganization" or "liquidation" bankruptcy case.

Q: How can I find out if my tenant filed for bankruptcy?

A. All creditors listed by the tenant will receive a Notice of Bankruptcy Filing by mail at the address provided to the U.S. Bankruptcy Court. Anderson & Associates is a registered user of PACER (Public Access to Court Electronic Records) and can quickly search for your tenant's name online to confirm if a bankruptcy has been filed.

Q: What is the CM/ECF system?

A. The CM/ECF (Case Management/Electronic Case Files) system is the electronic case management and filing platform used by the United States Federal Bankruptcy Court in Missouri for public access and filings.

Q: What is Chapter 7 bankruptcy?

A. Chapter 7 bankruptcy is a type of liquidation proceeding. In this process, a tenant's non-exempt assets may be seized and sold to pay off some or all of their debts. Unsecured debts, such as unpaid rent, late fees, utility charges, and court costs are typically discharged, meaning they are forgiven by the court and do not have to be repaid to the landlord.

Q: What is exempt property?

A. Exempt property refers to assets that are protected from being sold to pay off a tenant's debts during bankruptcy. Federal law defines what qualifies as exempt property, which typically includes items such as the tenant's furniture, car, jewelry, and clothing.

Q: What is secured debt?

A. Secured debt is a type of debt backed by collateral. Examples include a car loan or a mortgage, where the vehicle or home serves as security for the loan.

Q. What is an unsecured debt?

A. An unsecured debt is a debt that is not guaranteed by collateral. Rent, late fees, utility charges, and court costs are unsecured debts.

Q: What is Chapter 13 bankruptcy?

A. Chapter 13 bankruptcy, also known as “wage earner” bankruptcy, is a type of reorganization plan. It is available to tenants who have a reliable source of income and agree to a repayment plan lasting 3 to 5 years. The repayment amount is determined by the tenant's income, total debt, and how much unsecured creditors would have received under a Chapter 7 bankruptcy. In a Chapter 13 plan, secured creditors are paid before unsecured creditors, such as landlords.

Q: What is Chapter 11 bankruptcy?

A. Chapter 11 bankruptcy is typically used by businesses facing financial difficulties as a way to reorganize their operations and repay their debts. Compared to Chapter 7 and Chapter 13 bankruptcies, Chapter 11 is more costly and time-consuming, and it is rarely encountered in residential landlord-tenant cases.

Q: What is the automatic stay?

A. The automatic stay is an immediate protective measure that goes into effect when a tenant (also known as a debtor) files for bankruptcy. It halts any actions by landlords to start or continue an eviction lawsuit or pursue debt collection against a tenant who has filed for bankruptcy.

Q: What is a violation of the automatic stay?

A. A violation of the automatic stay occurs when a landlord takes any action prohibited by the stay after a tenant files for bankruptcy. This includes issuing an eviction notice, starting an eviction action, continuing an ongoing eviction lawsuit, or attempting to collect unpaid rent. Even seemingly minor actions, such as sending a demand letter or discussing the past due balance with the tenant, can be considered violations.

Q: Why do I need relief if my lease states otherwise?

A. Many rental agreements include clauses that terminate or modify the lease if a tenant becomes insolvent or files for bankruptcy. While landlords often include these provisions, bankruptcy laws render them unenforceable. As a result, relief from the automatic stay is necessary to take action, even if the lease specifies otherwise.

Q: What can happen if I violate the automatic stay?

A. A landlord who violates the automatic stay can be held liable and face sanctions for any damages suffered by the tenant. A judge may impose fines and award the tenant compensation for attorney’s fees, damages, and court costs. Additionally, a tenant may be entitled to recover compensation for emotional distress and lost wages incurred while addressing the violation.

Q: What is a Motion for Relief from the Automatic Stay?

A. A Motion for Relief from the Automatic Stay is a request made to a Federal Bankruptcy Judge by a landlord to lift the automatic stay. This allows the landlord to start or continue an eviction lawsuit or pursue debt collection against a tenant who has filed for bankruptcy. Alternatively, a landlord may file a stipulation for relief from the automatic stay if the tenant and his/her attorney, agrees to it.

Q. My tenant filed bankruptcy after I obtained an eviction judgment but before the sheriff removed the tenant. Do I still need to file a Motion for Relief?

A. The “judgment exception” allows a landlord to continue eviction proceedings after a tenant files for bankruptcy, as long as the landlord secured a judgment for possession before the bankruptcy filing. However, some sheriffs may refuse to remove the tenant’s personal property from the rental unit due to concerns that it is protected by the automatic stay. To avoid potential liability and ensure a smooth process, it is best practice to file a Motion for Relief.

Q: What information do you need from me?

A. Please fill out the **Bankruptcy Information Form** and email it to litigation@mokslaw.com. Be sure to include any notices you have received from the tenants about their bankruptcy, a copy of the lease agreement, and an up-to-date payment ledger.

Q: What is a lease agreement?

A. A lease agreement is a contract between a landlord and tenant that specifies the monthly rent amount and the duration of the tenancy. It also outlines the rights, obligations, and responsibilities of both parties. If you do not have an executed lease agreement, please contact Julie Anderson at julie@mokslaw.com to discuss your arrangement with the tenant or how we can assist you in drafting a lease agreement.

Q: What is a payment ledger?

A. A payment ledger is a financial record used to track income and expenses for a rental property. It typically includes columns for the payment due date, monthly rent amount, payments made, and any outstanding balance. For reference, see a Sample Payment Ledger on our website at <https://mokslaw.com/forms/>.

Q: What is required when filing a Motion for Relief from the Automatic Stay?

1. Filing fee of \$199.00
2. A Motion for Relief from the Automatic Stay (also known as a “Motion for Relief”)
3. Notice of Motion and Opportunity to Object (prepared by the Court for Missouri bankruptcies, prepared by attorneys for Kansas bankruptcies)
4. Certificate of Service
5. Certificate of No Response (if applicable)
6. Proposed Exhibit and Witness List (if applicable)
7. Order Granting the Motion for Relief

Q: Where will my Motion for Relief be filed?

A. Your Motion for Relief will be filed in the United States Bankruptcy Court for the Western District of Missouri, located at the Charles Evans Whittaker U.S. Courthouse, 400 East 9th Street, Kansas City, MO 64106 or the United States Bankruptcy Court for the District of Kansas, located at the Robert J. Dole Courthouse, 500 State Avenue, Kansas City, KS 66101.

Q. What notice is required prior to filing my Motion for Relief?

A. No notice is required prior to filing a Motion for Relief.

Q: How long does the relief process take?

A: The United States Code establishes a strict timeline for courts to follow when ruling on Motions for Relief. Unless the parties agree otherwise, a final hearing must be held on a Motion for Stay Relief within 30 days from the initial 1st appearance hearing. Once a Stay Relief Order is entered, landlords must wait

14 days from the date of the Order before they can resume eviction proceedings unless they demonstrated cause to have the 14-day extension waived.

Q: How much does it cost to file a Motion for Relief?

A. In addition to the \$199.00 filing fee referenced above, Attorneys at Anderson & Associates charge \$350.00 per hour, while paralegals charge \$150.00 per hour. For a comprehensive list of court costs, please refer to the Bankruptcy Fee Schedule available at <https://mokslaw.com/forms/>.

Q: Why do I need a lawyer to file a Motion for Relief?

A. If your rental property is owned by a business entity, the law requires you to be represented by a lawyer. If you own the property in your individual name, you may be able to represent yourself. However, Title 11 of the United States Code includes complex laws and procedures, and judges often set a high standard for ruling in a landlord's favor, especially when a person's home is at stake. Landlords, like any other business owners, seek to maintain profitability and minimize liability. Hiring an attorney to guide you through this process is a prudent business decision.

Q: What is a Notice of Motion and Opportunity to Object?

A. A Notice of Motion and Opportunity to Object is a required form in Kansas bankruptcies that outlines the details of a Motion for Relief and informs all parties that they must file any objections in writing and serve a copy to Anderson & Associates. In Missouri bankruptcies, this document is prepared by the court and served to us via the CM/ECF email system.

Q: After you file my Motion for Relief, I was told you have to serve the other party. What does that mean?

A. Anderson & Associates is responsible for serving copies of the Motion, Notice, Order, and Brief to all relevant parties, including the tenant, the tenant's attorney, the Bankruptcy trustee assigned to tenant's Bankruptcy case, and any other party with a known interest in the property, rents, or proceeds.

Service can be completed in several ways, but the most straightforward method is uploading the documents through the federal CM/ECF email system. Once service is completed, an attorney at Anderson & Associates will file a Certificate of Service with the court. This certificate must include the date of service, the names of the documents served, the names and addresses of the parties served, and the method of service.

Q: What happens if no objection is filed?

A. If the tenant does not file a written objection to the Motion for Relief, the Bankruptcy Court in Missouri cases will enter an Order granting the Stay Relief Motion. In Kansas Bankruptcy cases, the attorney prepares a Stay Relief Order for the court's review which is then entered into the record by the assigned Bankruptcy judge. The attorney then serves copies of the Stay Relief Order and files a Certificate of Service in tenant's Bankruptcy Case.

Q. Once the proposed Order Granting the Motion for Relief is signed by a Judge, who informs the tenant?

A. If tenant is represented by a Bankruptcy attorney, his/her attorney will notify tenant of the Stay Relief Order. In addition, an attorney at Anderson & Associates will also serve a copy of the Order and file a Certificate of Service in the tenant's Bankruptcy case.

Q: What happens if someone objects to the Motion for Relief?

A. If an objection to the Motion for Relief is filed, the Bankruptcy Court will schedule an initial first appearance hearing and, if the parties are unable to reach an agreement at the first hearing, the Bankruptcy Court will schedule an evidentiary hearing which is similar to a civil trial, and a paralegal or attorney at Anderson & Associates will notify you via email with the hearing date, time, and location, for the evidentiary hearing.

Q. Do I have to attend the evidentiary hearing?

A. Yes. Your testimony is necessary in order for an attorney at Anderson & Associates to get you your Motion for Stay Relief granted.

Q. Can someone else go to the evidentiary hearing instead of me?

A. You do not have an automatic right to have a friend or family member represent you in court. However, a property manager or someone you've appointed to manage your business may appear on your behalf if they are knowledgeable about the case. The person appearing should (A) understand how company records are stored and maintained (e.g., software used, ledger processes), (B) be familiar with the contents of all relevant records (such as leases and payment ledgers), and (C) hold a position that allows them access to and control over these company files.

Q. What happens at the evidentiary hearing if I do not show up?

A. If a creditor fails to appear for the evidentiary hearing, the Stay Relief Motion case will most likely be denied.

Q. What happens at the evidentiary hearing if my tenant does not show up?

A. If a tenant fails to appear for an evidentiary hearing, the Bankruptcy Judge will most likely enter an Order granting your Stay Relief Motion.

Q. What should I wear to the evidentiary hearing?

A. Your attire matters in court, as the judge and others will observe how you present yourself. It's important to show that you (a) respect the courtroom and (b) take the proceedings seriously. We recommend wearing conservative attire, similar to what you would wear to church, work, or a formal social event. Avoid wearing shorts, open-toed shoes, hats and ensure that your cell phone is set to silent before entering the courtroom. You will not be permitted to bring your cell phone into the Federal Courthouse so please be sure to leave it in a safe location in your car.

Q. How long should I expect to be there?

A. We strive for each evidentiary hearing to last no longer than 1 hour; however, the timing is largely dependent on the court's schedule, which can be unpredictable. We are subject to the court's docket, so delays or extended waiting times are possible.

Q: What documents do I need to bring to the evidentiary hearing?

A. Please bring the following documents to court:

1. The original executed lease (a copy is acceptable if the original is unavailable)
2. A current payment/rental ledger
3. The tenant's rental file, including any pre-petition demands or termination notices

Note: Copies of these documents must be provided to an attorney at Anderson & Associates at least 14 days before your evidentiary hearing. Timely submission is crucial to ensure the Witness and Exhibit List is filed on time and that we are prepared for the evidentiary hearing. Failure to submit these documents within this period may result in significant delays to your case.

Q. What will happen at the evidentiary hearing?

A. During the evidentiary hearing, an attorney from Anderson & Associates will call you to the judge's bench to testify. You will be sworn in to testify truthfully. The attorney will then ask you a series of questions regarding your lease agreement, any notices issued, the payment ledger, or other relevant evidence supporting your Motion for Relief. It is crucial that you familiarize yourself with these documents beforehand.

If you are requesting past due rent, be sure to understand the details of when and where payments were made, how they were applied, and how you calculated the amounts you are asking the judge to award. You will have the lease agreement and payment ledger in hand as the attorney questions you. Keep in mind, if you cannot clearly explain your payment ledger, the judge may also struggle to understand it.

Q. What questions are you going to ask me at the evidentiary hearing?

A. During an evidentiary hearing on a Motion for Relief, your attorney will ask you questions to establish key facts supporting your case. Here's a general overview of the types of questions you will be asked:

1. Personal Information:

- You'll be asked to state your name, your role (e.g., property owner or manager), and confirm your knowledge of the property and its records.

2. Lease Agreement:

- You'll be asked if you are familiar with the lease.
- Questions will cover the lease details, such as the parties involved (landlord and tenant), the rental amount, due dates, late fee provisions, and the tenant's signature.

3. Payment Ledger (if applicable):

- You will be asked about the accuracy of the payment ledger and details of the tenant's payment history.
- This includes when the last payment was made, any outstanding balances, and if legal fees or other costs are reflected in the ledger.

4. Termination Notices (if applicable)

- You'll identify the notice, describe when and how it was served, and explain the basis of the lease violation based on your knowledge.

5. Attorney Invoices:

- Your attorney may introduce invoices showing the legal fees incurred. You'll confirm that these invoices accurately reflect the work done and are recorded in the normal course of business.

6. Final Requests:

- You'll be asked to confirm that you are seeking relief from the automatic stay so you can start or continue an eviction lawsuit or pursue debt collection against your tenant

It's important to review your documents ahead of time, but don't worry if you can't recall everything perfectly. It's acceptable to say, "I don't know," and your attorney will guide you through the testimony to ensure clarity.

Q. Will you try to settle the case before the evidentiary hearing?

A. Yes. We will try to settle all cases prior to the evidentiary hearing. You will be involved in the settlement negotiations. Please make sure that you have settlement authority from the owner prior to the trial date. If you do not feel comfortable settling your case, an attorney at Anderson & Associates will be present and prepared to try the case with a Judge.

Q: What is an Order for Relief?

A. An Order for Relief is a judge's ruling that outlines the rights and obligations of the parties involved in a Motion for Relief. This order also typically includes the court's rationale for its decision and explains why the judge has ruled in a particular way.

Q: Should I accept money from the tenant after they have filed for bankruptcy?

A. You are required to accept post-petition payments, such as rent due after the bankruptcy filing. However, it is essential to properly document and apply these payments to ensure they are not mistakenly attributed to pre-petition debts, which could lead to a violation of the automatic stay.

It is strongly advised not to accept pre-petition payments without first consulting your attorney to ensure compliance with bankruptcy laws and to avoid unintentional violations of the stay.

Q: What is a pre-petition debt?

A. A pre-petition debt includes rent, late fees, utility charges, and court costs that accumulate before a tenant files for bankruptcy. These debts are classified as unsecured claims and are the last to be paid, often at a significant discount, if they are paid at all.

Q: What is a post-petition debt?

A. A post-petition debt refers to any claim for rent, late fees, utility charges, and court costs that accrue if a tenant remains in the rental property after filing for bankruptcy. These claims are prioritized and typically paid before pre-petition claims in a bankruptcy case.

Q. I have been awarded Relief, but the tenant is still there. What can I do?

A. Unless waived by the Bankruptcy Court, an Order for Relief becomes final after 14 days. Once it is final, a landlord can exercise all state law rights and remedies, including sending a demand notice, initiating or continuing an eviction action, and attempting to collect post-petition rent, late fees, utility charges, and court costs.

Q: What is a proof of claim?

A. A proof of claim is a bankruptcy form filed by a creditor (someone owed money in a bankruptcy case) that details the amount the debtor owes and the basis for the claim. Creditors must include supporting documents, such as promissory notes, lease agreements, payment ledgers, or cashed checks, to substantiate their claims. In most cases, if tenant has filed a Chapter 13 Bankruptcy case, your deadline to file a proof of claim is 70 days from the date of filing. In Chapter 7 Bankruptcy cases, you generally only file a proof of claim if the Chapter 7 Trustee issues notice that there are nonexempt assets to administer and sets a claims filing deadline.

Q. When should a landlord file a proof of claim?

A. **In a Chapter 7 case:** Landlords may only file a proof of claim if the United States Trustee identifies non-exempt assets that can be liquidated to pay creditors. In such instances, the Trustee will notify you of the filing deadline.

In a Chapter 11 or Chapter 13 case: Landlords are always permitted to file a proof of claim. The deadline for filing will be specified in the *Notice of Filing*, which is sent to you by mail when the case is initiated.

Q: What happens after a creditor files the proof of claim?

A. In Chapter 7 cases, the Chapter 7 Trustee uses the proofs of claim to distribute funds to creditors based on the money recovered from the debtor's estate.

In Chapter 13 cases, the Chapter 13 Trustee may review the proofs of claim to raise objections to the tenant's repayment plan. The landlord also has the opportunity to object to the proposed repayment plan.

Please note: *Filing a proof of claim does not guarantee that you will receive full or partial payment of the debt owed by the tenant.*